

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
Expanding the Economic and Innovation ) Docket No. 12-268  
Opportunities of Spectrum )  
Through Incentive Auctions )

NOTICE OF EX PARTE EMAIL  
MICHAEL GRAVINO

Michael Gravino  
LPTV Investor

PO Box 15141  
600 Pennsylvania Ave, SE  
Washington, DC 20003  
(202) 604-0747  
mikegravino@yahoo.com

March 29, 2013

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12 th Street, SW  
Washington, DC 20554

RE: In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum  
Through Incentive Auctions, GN Docket No. 12-268  
NOTICE OF EMAIL EX PARTE CONVERSATION

Dear Ms. Dortch:

On Friday, March 29, 2013, Mike Gravino, an LPTV investor, producer of a civic affairs broadcast network, and content programming consultant to LPTV and Class-A stations, exchanged emails related to the Incentive Auction, with Mr. Hossein Hashemzadeh, the FCC's Media Bureau designated Class-A Television Service expert and official contact person.

The subject of this email exchange was to ascertain the legal process of the FCC to expand the Class-A television service as a method to provide LPTV stations which want to become "civic broadcasters" in order to provide their communities with vital local content, and so that these stations, especially in the top-30 DMA, be afforded an additional level of spectrum protection during the repack post-Incentive Auction.

I asked Mr. Hossein whether Congress needed to direct the FCC to provide new opportunities for LPTV stations to apply for Class-A status, or could the FCC do this themselves and already had the authority to do so. Mr. Hossein explained that in order for LPTV to apply for Class-A status the FCC would have to open a new "application window" as it had back in 2000, but that internally the Commission and FCC staff had no plans to do so.

## DISCUSSION

The FCC has analyzed that in the top-30 DMA there is the most need for additional spectrum for the wireless companies. It is within these top-30 DMA that LPTV stations have the greatest risk of being totally displaced in the repack. It is also in these same DMA that the FCC could generate the most amount from the auction from participating stations. If the FCC would open another "Class-A window", this could provide "spectrum protection" for those stations wanting to become civic broadcasters (and as such would be able to provide local government and education access content to the satellite and broadcast viewers who do not now get this programming). A new Class-A window would also allow qualifying LPTV stations in the top-30 DMA where the spectrum crisis is suppose to enter into the Incentive Auction process, and as such could become a huge additional new source of revenues for the auction.

If a new Class-A window is not opened the FCC will severely be limiting the total potential revenues of the auction and as such not adhering the intent of the law. Further, the FCC will be creating a spectrum crisis in the television service since there will not be enough spectrum for the newly emerging civic broadcasting movement.

FCC staff has no authority to limit the revenues of the auction and has a mandate through other regulations to expand opportunities for local content. Since there will be a new FCC Chair and two new Commissioners, the opportunity has been created to revisit opening the Class-A window for the benefit of both the Incentive Auction and local civic content.

FCC has recently sent out letters to 100's of Class-A licensees threatening to take away their Class-A status and eligibility for participating in the auction if they are not compliant regarding their Class-A responsibilities. While these legal threats can have a positive effect of encouraging Class-A stations to conduct themselves according to FCC regulations, they also run the risk of limiting the potential participants in the auction. One has to ask, why? Why is the FCC staff so determined on both not opening a Class-A window, and declassing existing Class-A stations?

Further, it has been reported that FCC staff intends on basing the eligibility of Class-A stations based on the date that the Incentive Auction was passed in 2012. Why? These stations have a legal right to build-out their Class-A digital facilities according to the Construction Permits they have and not the date the Incentive Auction legislation was passed.

The answer these “why” questions increasingly seems to be that FCC staff, either of their own initiative or through direction of the Commissioners, to limit the Class-A participants in the auction. Again, why? I believe it is because FCC staff thinks that they will get to auction off the spectrum no matter which stations participate in the auction, and the less the qualifying stations the more revenues they can generate.

Further, it has been reported in other Ex Parte Comments that FCC staff is considering a plan to base auction revenues to participating stations based on their market value, and or programming value. This is so against the intent of the enabling auction legislation that it is almost laughable if it was not so serious a flaw in thinking. Bits is bits, no matter what is aired on the station. And this only goes to show how FCC staff is not working to create a fair auction process.

## CONCLUSION

By reopening a Class-A window the FCC will potentially increase the amount the spectrum available for the auction AND increase the amount of local civic content. FCC staff is working directly against the LPTV and Class-A service without any legal authority and Congressional intent. With a new FCC Chair and two new Commissioners the Class-A window and rules for which Class-A stations are eligible for the incentive auction need to be part of the Congressional confirmation process, and will be.

As I have mentioned in my previous comments, I have contacted all of the Commissioners, the Media Bureau, and the Spectrum Auction staff requesting Ex Parte meetings, but have only been granted one meeting with outgoing Commissioner McDowell's staff, and the approved referenced email with the FCC Class-A designated expert. LPTV licensees are secondary only in their spectrum protection and should not be discriminated against like this. Our class of stations represents the most amount of potential spectrum which could be made available in the auction, we should at least be provided adequate time for Ex Parte meetings.